



Judicial Council of California • Administrative Office of the Courts

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JUDICIAL COUNCIL REPORT

For business meeting on June 24, 2011

Title	Agenda Item Type
Telephone Appearances: Fees and Revenues	Action Required
Rules, Forms, Standards, or Statutes Affected	Effective Date
Amend Cal. Rules of Court, rules 3.670 and 5.324; approve apportionment and allocation of FY 2009–2010 revenue amounts	July 1, 2011
Recommended by	Date of Report
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Executive Summary

To implement Senate Bill 857, the 2010 judicial-branch related budget trailer bill that requires the Judicial Council to establish statewide, uniform telephone appearance fees by July 1, 2011, the Office of the General Counsel and the Finance Division of the Administrative Office of the Courts recommend that the Judicial Council amend rule 3.670 of the California Rules of Court to establish a uniform telephone appearance fee, a late fee, and a cancellation fee to be charged by vendors and courts for parties and their attorneys to appear by telephone at court hearings, conferences, and proceedings in civil cases. This report also recommends that rule 5.324 on telephone appearances in Title IV-D child support proceedings be amended to be consistent with the amendments to rule 3.670. Finally, this report recommends that the Judicial Council (1) approve the proposed method of apportioning among vendors an amount equal to the total

revenue received by courts from vendors in fiscal year (FY) 2009–2010, and (2) approve the proposed method for allocating the fiscal year 2009–2010 revenue amount among eligible superior courts.

Recommendation

The Office of the General Counsel and the Finance Division of the Administrative Office of the Courts recommend¹ that the Judicial Council, effective July 1, 2011:

1. Amend rule 3.670 of the California Rules of Court on telephone appearances to establish statewide, uniform fees for telephone appearances consisting of (1) a telephone appearance fee of \$78, (2) a late request fee of \$30, and (3) a cancellation fee of \$5;
2. Amend rule 5.324 on telephone appearances in Title IV-D child support proceedings to provide accurate cross-references to the amended subdivisions in rule 3.670;
3. Approve the method of apportionment of the FY 2009–2010 revenue amount among the vendors that are parties to a master agreement for the provision of telephone appearance services; and
4. Approve the method of allocating quarterly to each eligible superior court an amount equivalent to one-fourth of what the court received in FY 2009–2010 from revenue-sharing arrangements with vendors.

The text of the amended rules is attached at pages 18–21. A chart showing the amounts to be distributed to the eligible courts based on the FY 2009–2010 revenue amount is attached at page 22.

Previous Council Action

Since the 1980s, the Judicial Council and the Legislature have been developing statutes, standards, and rules to permit parties to appear by telephone in various types of court proceedings.² The goal of these efforts has been to increase access to court proceedings and to reduce costs for attorneys and self-represented litigants by enabling them to appear in court by telephone.

Major legislative and rule changes relating to telephone appearances occurred in 2007. That year, the Legislature passed Assembly Bill 500 (Lieu; Stats. 2007, ch. 268) and the Judicial Council

¹ In preparing this recommendation, a working group composed of members of the Civil and Small Claims Advisory Committee, the Court Executives Advisory Committee, and other court representatives provided advice and comments.

² A history of the law on telephone appearances is included in a Judicial Council report prepared for its meeting on October 26, 2007. The report is available online at www.courtinfo.ca.gov/jc/documents/reports/102607itemA19.pdf.

amended rule 3.670. The legislation and the amended rule stated that their common intent was “to promote uniformity in the practices and procedures relating to telephone appearances in civil cases.” Both also contain a policy statement that “[to] improve access to the courts and reduce litigant costs, courts should permit parties, to the extent feasible, to appear by telephone at appropriate conferences, hearings, and proceedings.” (Code Civ. Proc., § 367.5(a); Cal. Rules of Court, rule 3.670(a).)

The impact of the previous efforts to promote and facilitate the use of telephone appearances in civil cases has been quite significant. The main provider of telephone appearances reports that, in four of the last five quarters, over 80,000 telephone appearances a quarter were made in the California courts. In the first quarter of 2011, the provider reported 82,787 telephone appearances.³

The principal rule of court concerning telephone appearances is rule 3.670, which prescribes the procedures for parties to appear by telephone in civil cases. The rule includes provisions on vendors, charges for service, audibility, the reporting of telephonic proceedings, and the provision of information about telephone appearances.⁴ Because rule 3.670 was most recently amended several years before the enactment of SB 857, it does not provide for any uniform fees for telephone appearances. As explained further below, to implement SB 857, rule 3.670 should be amended to include statewide, uniform telephone appearance fees, effective July 1, 2011. The rule should also be amended to include several other provisions to effectuate the legislation. Rule 5.324 should be amended to be consistent with rule 3.670.

Rationale for Recommendation

Telephone appearance fee legislation

SB 857, which was signed by the Governor on October 19, 2010, and went into effect immediately, contains several provisions relating to fees for telephone appearances in court proceedings.⁵

The bill provides that for each fee received for providing telephone services, each vendor or court that provides for appearances by telephone shall transmit \$20 to the State Treasury for deposit in the Trial Court Trust Fund. The amounts to be sent to the State Treasury shall be transmitted within 15 days after the end of each calendar quarter for fees collected in that quarter. (Gov. Code, § 72011(a)–(b).) The two vendors that currently provide telephone

³ The reported telephone appearances consist of non-cancelled, non-refunded telephone appearances conducted through CourtCall, LLC.

⁴ In addition, a rule concerning telephone appearances in Title IV-D child support proceedings was adopted in 2005. (See Cal. Rules of Court, rule 5.324.) That rule includes cross-references to the subdivisions of rule 3.670 on vendors, procedures, audibility, reporting, and information.

⁵ SB 857 [Stats. 2010, ch. 720] is available online at www.leginfo.ca.gov/pub/09-10/bill/sen/sb_0851-0900/sb_857_bill_20101019_chaptered.pdf.

appearance services to the superior courts in California have been transmitting the funds as required.

The telephone appearance fee statutes enacted as part of SB 857 require certain additional actions to be taken for the legislation to be fully implemented. In particular, SB 857 provides: “On or before July 1, 2011, the Judicial Council shall establish statewide, uniform fees to be paid by a party for appearing by telephone, which shall supersede any fees paid to vendors and courts under existing agreements and procedures.” (Code Civ. Proc., § 367.6(a).) This provision reflects the long-term policy supported by the bar and the public that the procedures and processes for appearances in court by telephone should be uniform throughout California. As specified in SB 857 and codified in Code of Civil Procedure section 367.6(a), the fees to be paid for telephone appearances shall include:

1. A fee for providing the telephone appearance service pursuant to a timely request to the vendor or court;
2. An additional fee for providing services if the request is made shortly before the hearing, as defined by the Judicial Council; and
3. A fee for canceling a telephone appearance request.⁶

Rule on proposed fees

To implement SB 857, the Judicial Council, by July 1, 2011, must establish the amounts of three specific fees: (1) a fee for telephone appearances, (2) a late request fee, and (3) a cancellation fee.

Telephone appearance fee (rule 3.670(j)(1))

The principal fee to be established is the telephone appearance fee. This is the total fee to be charged by a vendor or court for providing telephone appearance services to a party that wants to appear by telephone. The fee includes the \$20 that the vendor or court receiving the fee must transmit to the State Treasury for deposit in the Trial Court Trust Fund.

Currently, two vendors provide telephone appearance services to the trial courts in California. One vendor provides services in 57 counties and the other in 1 county. The first vendor’s fee at each court ranges from \$70 to \$85 per call, including the \$20 for transmittal to the State Treasury; the different amounts charged mostly reflect existing local contracts between the

⁶ Under SB 857, the version of Code of Civil Procedure section 367.6 that provides for these fees will become inoperative on July 1, 2013, and, as of January 1, 2014, will be repealed, unless a later enacted statute that becomes operative on or before January 1, 2014, deletes or extends the dates on which it becomes inoperative and is repealed. Thus, the recommended amendments to the rules implementing SB 857 will need to be reviewed again within two years to determine what further rule changes may be necessary to comply with the statutory changes that will occur in 2013.

vendors and courts under which some courts share a portion of the vendor's revenue from telephone appearance fees and others do not.⁷ In general, the fee is higher at courts that receive a portion of the fee revenue from the vendor. The second telephone appearance services vendor charges a total of \$74 per call, including the \$20 collected for transmission to the State Treasury and \$14 collected for the one court it services.

This report recommends that the statewide, uniform telephone appearance fee be established in the amount of \$78 per call. This proposed fee would be lower than the current fee charged in 43 counties and higher than the fees charged in 15.⁸ The proposed fee amount is based on the assumption that the telephone services and equipment that will be provided under the new master agreement will be at essentially the same level of quality as is presently provided.

Fee for late requests (rule 3.670(j)(2))

The vendor providing services to 57 trial courts currently charges a late fee between \$0 and \$35, though the larger amount is more common. The other vendor, which provides services to 1 trial court, currently does not charge a late fee, though it has stated that it once did and reserves the right to do so again to prevent abuse. This proposal recommends a fee of \$30 for all late requests to appear by telephone. The proposed amount is lower than the amount charged in 44 courts and higher than the amount in 14.⁹ The definition of what constitutes a late request has been carefully delineated in the rules. (See amended rule 3.670(j)(2).)

Cancellation fee (rule 3.670(j)(3))

The current vendors do not charge a cancellation fee nor do they want to do so in the future because it is not financially worthwhile to collect that fee and attempting to do so can create bad customer relations. The applicable statute, however, requires a cancellation fee. (See Code Civ. Proc., § 367.6(a)(3).) Hence, this proposal recommends that the cancellation fee be assessed at the nominal amount of \$5. Furthermore, the report recommends that a hearing or an appearance that is taken off calendar or continued by the court should not be treated as a cancellation under the rule. If the hearing or appearance is taken off calendar by the court, there would be no charge to the party for the telephone appearance. If the hearing or appearance is continued by the court,

⁷ Under SB 857, the existing local contracts between the vendors and the courts will be terminated and replaced by a new statewide master agreement; hence, there will no longer be any revenue sharing between the vendors and the courts under local contracts. However, to prevent service disruption in courts that previously received revenues, SB 857 provides that—in addition to the \$20 per call transmitted to the State Treasury—vendors shall transmit an amount equal to the total amount of revenue received by all courts from all vendors for providing telephone appearances in the 2009–2010 fiscal year, which amount shall be allocated by the Judicial Council to the courts. (Gov. Code, § 72011(c)–(e).) Thus, after the new uniform telephone appearance fees are established, vendors will continue to provide some share of the revenues that they receive to the courts in addition to \$20 per call sent to the State Treasury for deposit in the Trial Court Trust Fund.

⁸ Currently, the telephone appearance fees (and the number of courts with the fee) are as follows: \$85 (28 courts), \$80 (15 courts), \$75 (11 courts), \$74 (1 court), and \$70 (3 courts).

⁹ Currently, there is a \$35 late fee in 44 courts and no late fee in 14 courts.

the appearance fee would be refunded to the requesting party or, if the party agrees, would be applied to the new hearing date.

Other proposed rule amendments

This report recommends several additional amendments to rule 3.670 to assist in the implementation of the new legislation.

First, rule 3.670 would be amended to be consistent with the provisions in SB 857 concerning the permissible methods of providing for telephone appearances.¹⁰ Existing rule 3.670(i) allows courts to enter into contracts with private vendors; it would be replaced with a new provision listing the permissible methods of providing these services, effective July 1, 2011. Specifically, amended subdivision (i) would authorize courts to provide for telephone services only by one of three methods: (1) under an agreement with a vendor or vendors that have entered into a statewide master agreement with the Judicial Council; (2) by directly providing telephone appearance services; or (3) under an agreement between the court and a vendor that was entered into before July 1, 2011, and has not expired. SB 857 requires that, if an existing local contract for telephone appearance services is subject to cancelation by the court after July 1, 2011, the court shall exercise its option to cancel the contract as soon after July 1, 2011 as is legally possible.

Second, rule 3.670 would be amended to specify the deadline by which a party must notify the vendor that it intends to appear by telephone to avoid being charged an additional fee for a late request. Currently, rule 3.670 provides that a party appearing by telephone must, at least three court days before the appearance, notify the court and all other parties of the party's intent to appear. If after receiving notice from another party, a party that has not given notice also decides to appear by telephone, the party may do so by notifying the court and all other parties that have appeared in the action, no later than noon on the court day before the appearance, of its intent to appear by telephone. (See rule 3.670(g)(1) and (2).) However, the current rule is silent on the notice to be given to vendors.

The amendments to rule 3.670 would provide that, if a party notifies a vendor that it wants to appear by telephone within the timelines contained in the provisions for notifying the court, the request is timely and no additional fee will be charged. The rule would also recognize certain other circumstances in which a party may provide shorter notice to the vendor without incurring a late fee because it would not be feasible or practical for the party to give notice earlier. (See proposed amended rule 3.670(j)(2).) Specifically, the rule on late fees would provide that an additional late request fee of \$30 shall be charged for an appearance by telephone if the request to the vendor or court providing telephone services is not made at least three days before the scheduled appearance, except when:

¹⁰ See Gov. Code, § 72010(c).

1. There is an ex parte or other hearing set on shortened time for which three days' notice would not be feasible or practical;
2. The court, on its own motion, sets a hearing or a conference on shortened time;
3. The matter has a tentative ruling posted within the three-day period; or
4. The request to appear by telephone is made by a party that received notice of another party's intent to appear and afterwards decides also to appear by telephone under rule 3.670(g)(2). The request of a party seeking to appear under (g)(2) would be timely if the request is made by noon on the court day before the hearing or conference.

Third, rule 3.670 would be amended to clarify how the fee waiver provision in SB 857 would operate for callers and vendors. The legislation provides that persons entitled to fee waivers shall not be charged telephone appearance fees, subject to certain enumerated conditions. (See Code Civ. Proc., § 367.6(b).) The statute, however, does not specify how a vendor or a court providing telephone appearance services is to know about or confirm the existence of a fee waiver. To clarify this, amended rule 3.670 would include a new provision stating that, to obtain telephone appearance services without paying a fee from a vendor or a court, the party must advise the vendor or court that he or she has a fee waiver and must transmit to the vendor a copy of the order granting the fee waiver if the vendor asks for it. (See amended rule 3.670(k)(2).) The amended rule would also include a provision about liens, as required by Code of Civil Procedure section 367.6(b). It would provide that, if a party because of a fee waiver receives telephone appearance services under the rule without paying a fee, the vendor or court that provides the services has a lien on any judgment, including a judgment for costs, that the party may receive, in the amount of the fee that the party would have paid for the telephone appearance. There would be no charge for filing the lien. (See amended rule 3.670(k)(3).)

Fourth, a new subdivision would be added to rule 3.670 clarifying how telephone appearances would work in proceedings for child or family support under Title IV-D of the Social Security Act. (See proposed amended rule 3.670(l).) Several provisions in rule 3.670 currently apply to Title IV-D cases. (See Cal. Rules of Court, rule 5.324(j).) However, because federal regulations prohibit charging fees in title IV-D cases where the state has elected to be a non-cost recovery state (as is the case with California's IV-D program), the revenue for the courts from the proposed statewide uniform fees established under rule 3.670 cannot be collected from any telephone appearances in IV-D cases without putting federal funding for California's child support program at risk. To ensure that this does not occur, amended rule 3.670 would include a new provision stating that, if a court provides telephone appearance services in a proceeding for child or family support under Title IV-D, the court must not charge any fee for those services. (See proposed amended rule 3.670(l)(1).) If a vendor provides for telephone appearance services in a Title IV-D proceeding, the amount of the fee collected under (j)(1) would be reduced by \$20 from the fee collected in civil cases; and no portion of the fee received by the vendor for a telephone appearance in a Title IV-D case would be transmitted to the State Treasury. (See

proposed amended rule 3.670(l)(2).) (*Id.*) The new subdivision in rule 3.670 on telephone appearances in Title IV-D proceedings would state that, when a party requests telephone services from a vendor or a court that provides telephone appearance services, the requesting party must advise the vendor or the court that the proceeding is for child or family support under Title IV-D brought by or otherwise involving a local child support agency. (See proposed amended rule 3.670(l)(3).) Finally, new subdivision (l) would state that the fee waiver provisions in (k) apply to a party in a Title IV-D proceeding requesting telephone appearance services from a vendor. (See proposed amended rule 3.670(l)(4).)

Fifth, existing subdivisions (j), (k), (l) and (m) of rule 3.670 would be relettered as subdivisions (m), (n), (o), and (p); and subdivision (o) would be amended to provide that the court, by local rule, may designate the conference call vendor or vendors that must be used for telephone appearances. This would be the vendor or vendors with which the court has entered into a participation agreement under the master agreement required by Government Code section 72010.

Sixth, an advisory committee comment would be added to rule 3.670 to clarify its scope and application. The comment would explain that rule 3.670 does not apply to criminal or juvenile matters; and it also does not apply to most family law matters. (See Cal. Rules of Court, rule 3.670(b) [rule applies to general civil cases and unlawful detainer and probate proceedings].) Certain provisions of the rule, however, would apply to telephone appearances in proceedings for child or family support under Title IV-D of the Social Security Act. (See rule 5.324(j) [subdivisions (i)–(p) of rule 3.670 apply to telephone appearances in Title IV-D conferences and hearings].) The comment would also note that, under Government Code section 72010(c) and subdivision (i)(3) of rule 3.760, even for proceedings in which fees are authorized, the fees may be waived by a judicial officer, in his or her discretion, for parties appearing directly by telephone in that judicial officer’s courtroom.

Finally, the report recommends amending rule 5.324 on telephone appearances in child support proceedings under Title IV-D. This rule currently provides that subdivisions (i) through (m) of rule 3.670, on vendors, procedure, audibility, reporting, and information, apply in child support proceedings under Title IV-D. (Cal. Rules of Court, rule 5.324(j).) To reflect the recommended amendments to rule 3.670, rule 5.324(j) would be amended to state that subdivisions (i) through (p) of rule 3.670 apply to telephone appearances under rule 5.324.

The master agreement and the apportionment of FY 2009–2010 revenue amount among vendors

SB 857 also directs the Judicial Council to take other implementing actions. The legislation provides: “On or before July 1, 2011, and periodically thereafter as appropriate, the Judicial Council shall enter into one or more master agreements with a vendor or vendors to provide for telephone appearances in civil cases under Section 367.5 of the Code of Civil Procedure or as otherwise authorized by law.” (Gov. Code, § 72010(a).) The Administrative Office of the Courts (AOC) previously issued and received responses to a Request for Information, two vendors

expressed an interest in providing telephone appearance services, and a master agreement has been prepared to implement the legislation.

This master agreement is in place, subject to Judicial Council approval of a provision on the apportionment of certain financial obligations among the vendors. Specifically, SB 857 requires the vendors who are parties to the master agreement to transmit “an amount equal to the total amount of revenues received by all courts from all vendors for providing telephonic appearances for the 2009–2010 fiscal year” (the “FY 2009–2010 amount”).¹¹ (Gov. Code, § 72011(c).) The legislation provides that the FY 2009–2010 amount “shall be apportioned by the Judicial Council among the vendors with which the Judicial Council has a master agreement pursuant to Section 72010. Within 15 days of receiving notice from the Judicial Council of its apportioned amount, each vendor shall transmit that amount to the State Treasury for deposit in the Trial Court Trust Fund.” (Gov. Code, § 72011(d).)

This report recommends that the Judicial Council approve the following method for apportioning the FY 2009–2010 amount of revenue among the vendors that become contractors under the master agreement for telephone appearance services. For the quarter of the fiscal year that commences on July 1, 2011, and for each quarter thereafter, all contractors that are a party to the master agreement shall contribute from the telephone appearance fees that they collect a total amount equal to one quarter of the FY 2009–2010 amount. Each contractor’s share of the amounts due quarterly under this revenue-sharing provision in section 72011 shall be based on that contractor’s proportionate share of the total revenue collected from all contractors during the previous quarter under the provisions in section 72010 for collecting and transmitting \$20 per call. After the end of each quarter and based on the reports required under Government Code section 72010(b)(3) and the master agreement, the AOC shall notify each contractor of the amount of the total quarterly FY 2009–2010 amount that it is obligated to pay for that quarter. Within 15 days of receiving notice from the AOC of its apportioned amount, the contractor shall transmit that amount to the State Treasury for deposit in the Trial Court Trust Fund.¹²

The allocation of the FY 2009–2010 revenue amount to the courts

SB 857 also directs the Judicial Council to allocate the FY 2009–2010 amounts received “for the purpose of preventing significant disruption in services in courts that previously received revenues from vendors for providing telephone appearance services. The Judicial Council shall

¹¹ Based on information provided by the vendors in response to the Request for Information, the total FY 2009–2010 revenue provided to courts for paid telephone appearances that occurred during FY 2009–2010 was \$943,840. This amount is used in the master agreement as the FY 2009–2010 amount to be apportioned among the vendors. The trial courts were sent a memorandum by AOC staff to provide them with an opportunity to review and challenge the revenue information provided by the vendors. One court reported a slightly higher revenue amount than the vendor based on revenues receipted during FY 2009–2010; however, the court agreed with the vendor’s reported amount for appearances that actually occurred during the 2009–2010 fiscal year.

¹² This method of allocation has been placed in the Master Agreement implementing Government Code section 72010; that agreement includes a statement that the allocation is subject to the approval of the Judicial Council.

determine the method and amount of the allocation to each eligible court.” (Gov. Code, § 72011(e).)

This report recommends that the Judicial Council approve a distribution every quarter to each of the eligible courts equivalent to one fourth of the amount that the court received in FY 2009–2010 from revenue-sharing arrangements with vendors. The specific amounts recommended for quarterly allocation to the courts are provided in the chart attached at page 22 (see especially columns C and D). This method of allocation will keep each court whole with respect to the amount that it had been receiving in FY 2009–2010, which was an important purpose of the legislation.

Comments, Alternatives Considered, and Policy Implications

Comments on rule proposals and alternatives considered

The rule proposal was initially circulated for public comment on a special cycle between March 7 and April 1, 2011. Eleven comments were received on that proposal.¹³ The commentators included two judges, a commissioner, an attorney, an unidentified individual, three superior courts, the Court Liaison Committee of the San Francisco Trial Lawyers Association, the Committee on Administration of Justice of the State Bar, and a vendor of telephone appearance services. Subsequently, the proposal was recirculated on another special cycle between April 28 and May 12. Eight additional comments were received.¹⁴ The commentators included four judges, two attorneys, and two superior courts. A chart describing all the comments and presenting responses is attached at pages 23–48.

General comments on proposed fees

The Court Liaison Committee of the San Francisco Trial Lawyers Association commented that “uniform fees for court calls are a very good idea.” (Comment chart, comment 6.)

Comments on the amount of the fees

A major purpose of this rule proposal is to establish the telephone appearance fees required by SB 857. As mentioned above, the principal telephone appearance fee in California varies by court: it is currently between \$70 and \$85 per call. The initial invitation to comment suggested that this fee might be set at a specific dollar amount between \$70 and \$75; and, relying in part on the weighted statewide average of the fees per call, the recirculated proposal suggested a fee of \$75. Several comments were received on this suggestion. Based on the comments and other information received, this report now recommends that the telephone appearance fee be set at \$78 per call.

¹³ In addition, one court indicated that it had reviewed the proposal but had no comments to submit.

¹⁴ The second circulation was to ensure that all comments were received (there had been a potential problem regarding whether some comments had not been received during the first circulation). The recirculation also gave the public a chance to comment on several new provisions added to the rules after the first comment period.

CourtCall, LLC, the main vendor of telephone appearance services for court proceedings in California, urged that the main telephone appearance fee be established at \$80 for the first two years. (See comment chart, comment 1.) CourtCall subsequently stated that, if the fee amount were set at \$75, it would lose over \$300,000 in revenue. The fee of \$80 per call proposed by CourtCall is less than the maximum amount of \$85 that it currently charges in about half of the California courts (28 courts), but it is also more than it charges in many other courts (14 courts) including some of the largest. Based on the information available and assuming the goal of revenue/profit neutrality, although the vendor's proposed fee amount of \$80 appears to be too high, an amount greater than the \$75 proposed in the most recent invitation to comment appears warranted.

To ascertain whether the proposed fee structure is appropriate, one factor considered is the weighted statewide average of all the current telephone appearance fees in the courts with which the vendors have contracts in California. In suggesting a \$75 fee in the invitations to comment, a calculation of the statewide weighted average of all the telephone appearance fees was made using paid first paper filing fee data for FY 2009–2010. On that basis, the weighted average for the fees was estimated to be \$75.69; hence, it was thought that a fee of \$75 would be relatively revenue neutral for the vendors. However, recalculating the amount using paid telephone appearance fee data in the most recent quarter (January-March 2011), the weighted statewide average is in the higher amount of \$76.80.

In determining the appropriate fee amount, CourtCall also suggested other factors to be considered. It states that weight should be given to the fact that its most recent service contracts with the courts have been at higher fee levels than in the past. Furthermore, CourtCall thinks that, because the share of the merchant fees (i.e., debit and credit card charges) attributable to collecting the new \$20 for each call remitted to the State Treasury cannot be deducted from the amounts remitted, those charges will be added to its costs and so should be included in the fees.¹⁵ And it claims that other expenses such as rising medical costs for its employees justify a higher fee.

In sum, based on the information currently available, there are grounds for charging a telephone appearance fee of \$78 per call for the next two years. Although this amount is slightly higher than was suggested in the invitations to comment, it would still be less than the amount of the telephone appearance fees currently charged to the public in 43 counties.

The late fees and cancellation fees have also been the subject of comments and further review. CourtCall's charges for late fees currently vary from \$0 to \$35; however, the majority of California courts (44), including most large courts, have late fees. CourtCall has stated that the reduction of the late fee from \$35 to \$25 would cost it \$173,650 a year. Although it appears that, in making this calculation, the company did not factor in new revenues it would receive from

¹⁵ Those charges are approximately \$0.34 per call.

parties appearing before courts that currently do not charge a late fee, it is still reasonable to conclude that the proposed \$25 late fee would result in some lost revenue. While the invitations to comment suggested a late fee of \$25, a slightly higher late charge of \$30 appears warranted. Also, neither of the current vendors wants to charge a cancellation fee; however, because that fee is required by statute, the nominal fee of \$5 was proposed in the invitations to comment and is recommended in this report. In the future as part of some legislation concerning telephone appearance fees, the cancellation fee might be eliminated.

Several other commentators remarked on the fee amounts. For instance, an individual suggested that the telephone appearance fee be set at \$20 per call. (Comment chart, comment 4.) This would be impractical and would defeat the purpose of the law that expressly provides for vendor-based telephone appearances. Because the principal telephone appearance fee includes the \$20 to be distributed to the courts, a fee set at the \$20 level would provide no revenue at all for vendors and no incentive for them to provide telephone appearance services. To address the issue of access for low-income parties, both SB 857 and the proposed rule amendments provide that if a party is entitled to a fee waiver, neither a vendor nor a court may charge that party any fees, subject to certain enumerated conditions. (See Code Civ. Proc., § 367.6(b); proposed amended rule 3.670(k)(1).)

Two other commentators questioned the late fee and the cancellation fee. For instance, one suggested eliminating the late fee and reducing the cancellation fee to \$1 (comment chart, comment 2); and another suggested reducing the proposed late fee from \$25 to \$5 (comment chart, comment 7). This report does not recommend these changes. First, the option of eliminating one or both of these fees is not available because the statute requires fees for late requests and cancellations. (See Code Civ. Proc., § 367.6(a).) Second, as discussed above, the proposed amounts of \$30 for the late fee and \$5 for the cancellation fee are warranted.

A judge questioned the underlying approach to the telephone appearance fees; he suggested that fees should be charged solely for the purpose of recovering the actual costs of providing telephone services and not for the purpose of raising revenue. (Comment chart, comment 12.) In SB 857, instead of authorizing fees to be set at an amount necessary to offset the courts' costs, the Legislature has specified the amounts of the court fees to be collected from telephone appearance revenues (i.e., \$20 per call, plus an amount from all vendors equivalent to the FY 2009–2010 revenue sharing amounts). Unlike an approach based strictly on each court's cost recovery, the approach used by the Legislature to determine the amounts of the court fees allows for the establishment of uniform, statewide telephone appearance fees. Persons making telephone appearances will be charged the same amount everywhere in the state. SB 857's statutory fee provisions are implemented in the rule amendments proposed in this report and in the master agreement to be entered into with the vendors.

The judge also asked if it is possible for each individual court to administer the proposed fee structure without losing money. (See comment chart, comment 12.) The fee structure in the statutes should provide sufficient revenues for all courts to administer the telephone appearance

programs without losing money. If a vendor provides telephone services for a court, the Trial Court Trust Fund will receive \$20 per call to be distributed to the trial courts; and eligible courts will receive additional amounts based on FY 2009–2010 revenue sharing. Finally, under SB 857, individual courts can determine if it is beneficial for them to provide telephone appearance services directly instead of using a vendor.

Comments on determining when a request is late

The initial version of amended rule 3.670 that was circulated stated that if a party notified a vendor that it wanted to appear by telephone within the timelines specified in rule 3.670((g)(1)–(2) for notifying the court, the request would be timely and not subject to a fee for a late request. The invitation to comment asked whether parties should be required to notify vendors of their request to appear by telephone anytime sooner than they provide notice to the court. Several comments were received on this issue. (See comment chart, comments 1, 2, 7 and 8.)

None of the commentators recommended any additional time for notice to vendors. However, some suggested clarifications of the rule. For example, a court recommended that there should be no late fee if the court, on its own motion, added a case on calendar with so little advance notice that a party could not make a timely request for a telephone appearance. (Comment chart, comment 8.) Another commentator expressed concern that every request for a telephone appearance at an ex parte hearing might be considered late and therefore result in the imposition of a late fee. (Comment 2.) The main vendor of telephone appearance services suggested that, consistent with its current practice, there should be a late fee if notice to the vendor is not provided at least three days before the appearance, but with exceptions for when the court has requested a hearing on shortened time, the matter has a tentative ruling posted within three days of the appearance, or the appearance is for an ex parte hearing in which the three-day rule would be impractical. (Comment 1.) Finally, the State Bar’s Committee on Administration of Justice stated that the notice to the vendor does not need to be any longer than to the court and notice by noon on the court day before the hearing should be sufficient. (Comment 7.)

Based on the comments, this report recommends that rule 3.670 should be amended to state that the late fee should apply if a request to appear by telephone is not made at least three days before the scheduled appearance, but with the following exceptions: (1) there is an ex parte or other hearing on shortened time for which three days’ notice would not be feasible or practical; (2) the court, on its own motion, has set a hearing or a conference on shortened time; (3) the matter has a tentative ruling posted within the three-day period; or (4) the request to appear by telephone is made by a party who received notice of another party’s intent to appear and afterwards decides also to appear by telephone under rule 3.670(g)(2).¹⁶ The request of a party seeking to appear

¹⁶ The first three exceptions are based on comments 1 and 8. The fourth exception is based partly on the original proposal that was circulated and partly on comment 7, which recognize that a request by a party that decides to appear after another party has requested to appear by telephone should not be treated as late for the purposes of the fee. However, this report does not agree with the suggestion of a commentator that notice to a vendor by noon the day before the appearance would generally be sufficient. For calendaring, scheduling and other reasons, both vendors and the courts often need more notice than such a rule would provide. (See comment 7 and response.)

under (g)(2) would be timely if its request is made to the vendor or the court by noon on the court day before the hearing or conference. (See proposed amended rule 3.670(j)(2)(A)–(D).) This approach balances the needs of vendors and courts to receive information about telephone appearances sufficiently in advance to make preparations with the recognition that, as a practical matter, certain requests cannot be made until shortly before a hearing or conference.

Comments on other rule issues

In response to the initial invitation to comment, some commentators raised questions and made suggestions about clarifying the scope of rule 3.670. For instance, a judge stated that she had no issue with the proposed rule, but that she uses telephone appearances in criminal and other types of proceedings. She did not want the setting of uniform fees by the rule to create an impression that courts always need to use a vendor to allow telephone appearances. (See comment chart, comment 3.) To clarify that rule 3.670 does not generally apply to criminal, family, or juvenile law cases and that a judge always has the discretion to use the court’s own telephone to conduct hearings and conferences, an advisory committee comment was added to amended rule 3.670. The advisory committee comment was included in the invitation to comment when the rule proposal was recirculated.

After the recirculation, several commentators continued to raise questions about the scope of amended rule 3.670—in particular, they asked whether it applied, or should apply, to family law cases generally. (See comment chart, comments 15, 16 and 18.) One of the commentators expressly proposed that rule 3.670 be extended to apply to all family law cases and that the advisory committee comment should be modified to state that this was the case. (Comment chart, comment 15.) It would not be appropriate to extend rule 3.670 in this manner. The present rule proposal is intended to implement SB 857 by establishing uniform statewide fees for civil cases. Since its adoption, rule 3.670 has not applied to family law cases, except in limited respects to Title IV-D child support proceedings. (See Cal. Rules of Court, rule 5.324(j).) Likewise, the pending proposal for a new rule 5.9, authorizing courts to permit telephone appearances in family law cases generally, does not incorporate or include any of the provisions from rule 3.670. While in the future it may make sense to consider whether some of the provisions of rule 3.670 should be extended beyond Title IV-D proceedings to other types of family law proceedings, such an extension is beyond the scope of the present proposal. Deciding whether to extend the scope of rule 3.670 on telephone appearances into family law generally would require careful consideration of many matters, including whether only courts or also private vendors would provide telephone appearance services in family law matters. If vendors are interested and willing to provide such services, the issues of under what circumstances and conditions would they do so would need to be addressed.

Lastly, in response to the initial invitation to comment, a commissioner pointed out another matter that needed clarification in the rules. (See comment chart, comment 11.) Although rule 3.670 does not generally apply outside the civil area, there is an existing exception for child support hearings and conferences under Title IV-D of the Social Security Act; several provisions in rule 3.670 currently apply to these proceedings. (See rule 5.324(j).) But as the commissioner

pointed out, no court fees should be charged because California is a non-cost recovery state for the purpose of Title IV-D proceedings. To clarify this, a new subdivision (*l*) has been added to rule 3.670. It states that courts must not charge any fees in Title IV-D proceedings. Also, if a vendor provides for telephone appearance services in a proceeding for child or family support under Title IV-D, the fee amount for a telephone appearance under (j)(1) would be \$58 instead of \$78 (i.e., the \$20 for the court fee would not be charged). The rule would state that no portion of the fee received by the vendor for a telephone appearance is to be transmitted to the State Treasury under Government Code section 72011.

Alternatives considered on the apportionment of revenue amounts among vendors and the allocations to the courts

This report includes not only proposals for amendments to the rules of court, but also recommendations to implement other provisions in SB 857. Specifically, it recommends that the Judicial Council approve a method for the apportioning the FY 2009–2010 revenue amounts among the vendors participating in the master agreement and a method for allocating those FY 2009–2010 revenue amounts among the eligible courts.

Alternatives regarding apportionment

As mentioned above, SB 857 requires the vendors who are parties to the master agreement to transmit an amount equal to the total amount of revenues received by all courts from all vendors for providing telephonic appearances for FY 2009–2010. The legislation provides that the FY 2009–2010 amount shall be apportioned by the Judicial Council among the vendors with which the Judicial Council has a master agreement. Within 15 days of receiving notice from the Judicial Council of its apportioned amount, each vendor shall transmit that amount to the State Treasury for deposit in the Trial Court Trust Fund. (Gov. Code, § 72011(d).)

This report recommends that the Judicial Council approve the method of apportionment among the vendors described on pages 8–9 of this report. Under this method, each contractor's share of the amounts due quarterly under the revenue-sharing provision in section 72011 would be based on that contractor's proportionate share of the total revenue collected from all contractors during the previous quarter under the provisions in section 72010 for collecting and transmitting \$20 per call. After the end of each quarter and based on the quarterly reports required under Government Code section 72010(b)(3) and the master agreement, the Administrative Office of the Courts would notify each contractor of the amount of the total quarterly FY 2009–2010 amount that it is obligated to pay for that quarter.

Other methods of apportionment were considered. For example, the apportionment might have been based on the historical amount that each vendor actually contributed toward the revenue sharing during FY 2009–2010. The problem with this method of apportionment is that it would not provide for contributions by any new vendors that might become parties to the master agreement. It would also not allow for any significant shifts among vendors in their proportionate shares of the business of providing telephone appearance services.

Another alternative would have been to apportion the FY 2009–2010 amounts proportionately among the vendors based on the number of calls they provided quarterly rather than their respective revenues. Although this approach would not result in any significant difference in the apportionments among the vendors, it seems fairer to apportion the vendors’ shares based on revenues rather than just the number of calls.

Alternatives regarding allocations

As mentioned above, SB 857 directs the Judicial Council to allocate the FY 2009–2010 amounts received for the purpose of preventing significant disruption in services in courts that previously received revenues from vendors for providing telephone appearance services. “The Judicial Council shall determine the method and amount of the allocation to each eligible court.” (Gov. Code, § 72011(e).) This report recommends that the Judicial Council approve a distribution to each of the eligible courts based on what each of them received in FY 2009–2010: each of the courts would receive each quarter the equivalent to one fourth of the amount that the court received in fiscal year 2009–2010 from revenue-sharing arrangements with vendors.

There are limitations on the range of options available for the allocation of the FY 2009-2010 revenue amounts among the trial courts. In particular, SB 857 restricts the allocation of the amounts to “eligible courts,” i.e., courts that previously received revenues from vendors for providing telephone services. Thus, it would not be appropriate to approve any method of allocation that would distribute amounts to courts other than those eligible under Government Code section 72011.

As far as distribution among the eligible courts, SB 857 provides some flexibility. The legislation does not require that the amounts be allocated under any particular formula; rather it gives the Judicial Council the discretion to determine the amount and method of the allocation “for the purpose of preventing significant disruption of services.” This report recommends that at this time the council should approve a method of allocation to the eligible courts based on the amounts each court received in FY 2009–2010. This should minimize the disruptions for those courts, which would be consistent with the purpose of the legislation. If circumstances warrant revising this approach in the future, the council has the discretion to modify the method and change the allocations to the eligible courts based on the statutory purpose of preventing significant disruption in services.

Policy implications

This proposal implements legislation relating to telephone appearances at court hearings, conferences, and proceedings. It thereby fosters public access and helps reduce costs for litigants in civil cases.

Implementation Requirements, Costs, and Operational Impacts

This rule proposal by itself will not require any significant action by the courts. However, the underlying trailer bill legislation (SB 857) will require the courts to undertake some further administrative activities to fully implement that legislation, including canceling existing local

contracts with telephone appearance service vendors and electing to participate under the new master agreement with vendors that will be in effect by July 1, 2011. Courts will have the ability to choose their preferred vendor or vendors under the master agreement. To the extent that a court elects to continue to use its current vendor, there should be little change in operations. Also, under the legislation, a court will be able to provide telephone appearance services directly if it elects to do so.

Attachments

1. Cal. Rules of Court, rules 3.670 and 5.324, at pages 18–21.
2. Chart, FY 2009–2010 Telephone Appearance Fee Revenues Provided to Courts by Vendors, at page 22.
3. Chart of comments and responses, at pages 23–48.

Rules 3.670 and 5.324 of the California Rules of Court are amended, effective July 1, 2011, to read:

Rule 3.670. Telephone appearance

(a)–(h) * * *

(i) ~~Private vendor; charges for service~~ Provision of telephone appearance services

A court may provide ~~teleconferencing for court~~ for telephone appearances by entering into a contract with a private vendor. The contract may provide that the vendor may charge the party appearing by telephone a reasonable fee, specified in the contract, for its services. only through one or more of the following methods:

- (1) An agreement with one or more vendors under a statewide master agreement or agreements.
- (2) An agreement between a court and a vendor that was entered into before July 1, 2011, and that has not expired. If a contract is subject to cancellation by a court after July 1, 2011, that court must exercise its option to cancel the contract as soon after July 1, 2011 as is legally possible to do so.
- (3) The direct provision by the court of telephone appearance services. If a court directly provides telephone services, it must collect the telephone appearance fees specified in (j), except as provided in (k) and (l). A judge may, at his or her discretion, waive telephone appearance fees for parties appearing directly by telephone in that judge's courtroom.

(j) Telephone appearance fee amounts; time for making requests

The telephone appearance fees specified in this subdivision are the statewide, uniform fees to be paid by parties to a vendor or court for providing telephone appearance services. These fees supersede any fees paid by parties to vendors or courts under agreements or procedures existing before July 1, 2011. Except as provided under (k) and (l), the fees to be paid to appear by telephone are as follows:

- (1) The fee to appear by telephone, made by a timely request to a vendor or court providing telephone appearance services, is \$78 for each appearance.
- (2) An additional late request fee of \$30 is to be charged for an appearance by telephone if the request to the vendor or the court providing telephone appearance services is not made at least three days before the scheduled appearance, except when:

- 1 (A) There is an ex parte or other hearing or conference set on shortened time for
2 which three days' notice would not be feasible or practical;
3
4 (B) The court, on its own motion, sets a hearing or conference on shortened time;
5
6 (C) The matter has a tentative ruling posted within the three-day period; or
7
8 (D) The request to appear by telephone is made by a party that received notice of
9 another party's intent to appear and afterward decides also to appear by
10 telephone under (g)(2). The request of a party seeking to appear under (g)(2) is
11 timely if the request is made to the vendor or the court providing the service by
12 noon on the court day before the hearing or conference.
13
14 (3) A fee of \$5 is to be charged instead of the fees under (1) and (2) if a party cancels a
15 telephone appearance request and no telephone appearance is made. A hearing or
16 appearance that is taken off calendar or continued by the court is not a cancelation
17 under this rule. If the hearing or appearance is taken off calendar by the court, there
18 is no charge for the telephone appearance. If the hearing or appearance is continued
19 by the court, the appearance fee must be refunded to the requesting party or, if the
20 party agrees, be applied to the new hearing or appearance date.

21
22 **(k) Fee waivers**
23

24 (1) Effect of fee waiver
25

26 A party that has received a fee waiver must not be charged the fees for telephone
27 appearances provided under (j), subject to the provisions of Code of Civil Procedure
28 section 367.6(b).
29

30 (2) Responsibility of requesting party
31

32 To obtain telephone services without payment of a telephone appearance fee from a
33 vendor or a court that provides telephone appearance services, a party must advise
34 the vendor or the court that he or she has received a fee waiver from the court. If a
35 vendor requests, the party must transmit a copy of the order granting the fee waiver
36 to the vendor.
37

38 (3) Lien on judgment
39

40 If a party based on a fee waiver receives telephone appearance services under this
41 rule without payment of a fee, the vendor or court that provides the telephone
42 appearance services has a lien on any judgment, including a judgment for costs, that

1 the party may receive, in the amount of the fee that the party would have paid for the
2 telephone appearance. There is no charge for filing the lien.

3
4 **(l) Title IV-D proceedings**

5
6 **(1) Court-provided telephone appearance services**

7
8 If a court provides telephone appearance services in a proceeding for child or family
9 support under Title IV-D of the Social Security Act brought by or otherwise
10 involving a local child support agency, the court must not charge a fee for those
11 services.

12
13 **(2) Vendor-provided telephone appearance services**

14
15 If a vendor provides for telephone appearance services in a proceeding for child or
16 family support under Title IV-D, the amount of the fee for a telephone appearance
17 under (j)(1) is \$58 instead of \$78. No portion of the fee received by the vendor for a
18 telephone appearance under this subdivision is to be transmitted to the State Treasury
19 under Government Code section 72011.

20
21 **(3) Responsibility of requesting party**

22
23 When a party in a Title IV-D proceeding requests telephone appearance services
24 from a court or a vendor, the party requesting the services must advise the court or
25 the vendor that the requester is a party in a proceeding for child or family support
26 under Title IV-D brought by or otherwise involving a local child support agency.

27
28 **(4) Fee waivers applicable**

29
30 The fee waiver provisions in (k) apply to a request by a party in a Title IV-D
31 proceeding for telephone appearance services from a vendor.

32
33 ~~(j)~~**(m)** * * *

34
35 ~~(k)~~**(n)** * * *

36
37 ~~(l)~~**(o)** Conference call ~~provider~~ **vendor or vendors**

38
39 A court, by local rule, may designate ~~a particular~~ the conference call ~~provider~~ vendor or
40 vendors that must be used for telephone appearances.

41
42 ~~(m)~~**(p)** * * *

Advisory Committee Comment

This rule does not apply to criminal or juvenile matters; and it also does not apply to family law matters, except in certain respects as provided in rule 5.324 relating to telephone appearances in proceedings for child or family support under Title IV-D of the Social Security Act . (See Cal. Rules of Court, rule 3.670(b) [rule applies to general civil cases and unlawful detainer and probate proceedings]; rule 5.324(j) [subdivisions (i)–(p) of rule 3.670 apply to telephone appearances in Title IV-D proceedings].)

Under subdivision (i)(3) of this rule and Government Code section 72010(c), even for proceedings in which fees are authorized, the fees may be waived by a judicial officer, in his or her discretion, for parties appearing directly by telephone in that judicial officer’s courtroom.

Rule 5.324. Telephone appearance in Title IV-D hearings and conferences

(a)–(i) * * *

(j) Vendors, procedure, audibility, reporting, and information

~~Subdivisions (i) through (m) of Rule 3.670~~(i)–(p) applyies to telephone appearances under this rule.

(k) * * *

FY 2009-10 Telephone Appearance Fee Revenues Provided to Courts by Vendors

	Revenue Provided by CourtCall	Revenue Provided by Tele-Court	Total	Proposed Quarterly Allocation
Court	A	B	C	D
Alameda	\$0	\$0	\$0	\$0
Alpine	\$0	\$0	\$0	\$0
Amador	\$5,790	\$0	\$5,790	\$1,448
Butte	\$15,210	\$0	\$15,210	\$3,803
Calaveras	\$791	\$0	\$791	\$198
Colusa	\$0	\$0	\$0	\$0
Contra Costa	\$0	\$0	\$0	\$0
Del Norte	\$0	\$0	\$0	\$0
El Dorado	\$24,418	\$0	\$24,418	\$6,105
Fresno	\$75,930	\$0	\$75,930	\$18,983
Glenn	\$1,230	\$0	\$1,230	\$308
Humboldt	\$12,250	\$0	\$12,250	\$3,063
Imperial	\$25,465	\$0	\$25,465	\$6,366
Inyo	\$1,395	\$0	\$1,395	\$349
Kern	\$38,700	\$0	\$38,700	\$9,675
Kings	\$5,935	\$0	\$5,935	\$1,484
Lake	\$0	\$0	\$0	\$0
Lassen	\$4,241	\$0	\$4,241	\$1,060
Los Angeles	\$0	\$0	\$0	\$0
Madera	\$0	\$0	\$0	\$0
Marin	\$42,540	\$0	\$42,540	\$10,635
Mariposa	\$0	\$0	\$0	\$0
Mendocino	\$8,520	\$0	\$8,520	\$2,130
Merced	\$13,095	\$0	\$13,095	\$3,274
Modoc	\$370	\$406	\$776	\$194
Mono	\$0	\$0	\$0	\$0
Monterey	\$0	\$0	\$0	\$0
Napa	\$14,590	\$0	\$14,590	\$3,648
Nevada	\$0	\$0	\$0	\$0
Orange	\$0	\$0	\$0	\$0
Placer	\$24,920	\$0	\$24,920	\$6,230
Plumas	\$2,448	\$0	\$2,448	\$612
Riverside	\$0	\$0	\$0	\$0
Sacramento	\$43,920	\$0	\$43,920	\$10,980
San Benito	\$0	\$0	\$0	\$0
San Bernardino	\$239,760	\$0	\$239,760	\$59,940
San Diego	\$0	\$0	\$0	\$0
San Francisco	\$17,515	\$0	\$17,515	\$4,379
San Joaquin	\$51,955	\$0	\$51,955	\$12,989
San Luis Obispo	\$18,700	\$0	\$18,700	\$4,675
San Mateo	\$39,743	\$0	\$39,743	\$9,936
Santa Barbara	\$44,719	\$0	\$44,719	\$11,180
Santa Clara	\$0	\$0	\$0	\$0
Santa Cruz	\$21,904	\$0	\$21,904	\$5,476
Shasta	\$9,190	\$0	\$9,190	\$2,298
Sierra	\$630	\$0	\$630	\$158
Siskiyou	\$0	\$0	\$0	\$0
Solano	\$42,765	\$0	\$42,765	\$10,691
Sonoma	\$14,895	\$0	\$14,895	\$3,724
Stanislaus	\$46,740	\$0	\$46,740	\$11,685
Sutter	\$2,795	\$0	\$2,795	\$699
Tehama	\$1,340	\$0	\$1,340	\$335
Trinity	\$400	\$0	\$400	\$100
Tulare	\$12,890	\$0	\$12,890	\$3,223
Tuolumne	\$6,280	\$0	\$6,280	\$1,570
Ventura	\$0	\$0	\$0	\$0
Yolo	\$0	\$0	\$0	\$0
Yuba	\$9,456	\$0	\$9,456	\$2,364
Total	\$943,434	\$406	\$943,840	\$235,960

SP11-01 and SP11-04 – Telephone Appearances: Statewide Uniform Fees (amend Cal. Rules of Court, rules 3.670 and 5.324)

All comments are verbatim unless indicated by an asterisk (*).

	Commentator	Position	Comment	Response
1.	CourtCall, LLC Los Angeles, California By Bob Alvarado, CEO	NI	<p>In 1995 CourtCall created the turn-key telephonic court appearance system that is the basis for the revenue model contained within SB 857 and the rule at issue. In fact, it was also CourtCall that first suggested and implemented the revenue sharing program with local courts that has been successfully operating for almost 15 years. CourtCall has facilitated well in excess of two million CourtCall Appearances, and accordingly, is the one company that has the requisite experience and knowledge to address the issues surrounding the proposed rule.</p> <p>CourtCall set \$80 as the appropriate amount to be charged for the Uniform Statewide Fee. CourtCall did not arbitrarily determine this amount. Indeed, it is less than the maximum amount currently charged by CourtCall. Rather it was, and is, based upon CourtCall's unique position of knowing what is required to maintain the appropriate level of service demanded by courts and attorneys. No one else has the experience to do anything but speculate about this. While it is odd that CourtCall's historical late fee is proposed to be reduced by 28% (from \$35 to \$25), CourtCall does not challenge that change nor does CourtCall seek any increase in the \$5 cancellation fee. However, we are troubled by the notion that others who lack experience in the field have appeared to determine, by virtue of the suggestion in the Invitation To Comment, that the fee should be "between \$70 and \$75."</p> <p>The State previously established its share of the</p>	<p>The commentator's recommendation for an \$80 statewide uniform fee for telephone appearances has been carefully considered. Based on consideration of all the comments and information provided, this proposal recommends a statewide uniform telephone appearance fee of \$78 per call. Although \$80 per call is less than the maximum amount currently charged by CourtCall, it is also more than the weighted average of the fees currently charged by that vendor in all the courts where it has contracts. As discussed in the report, the recommended amount of \$78 per call is reasonable. In addition, based on the comments and other information, this proposal recommends that the late fee be set at \$30. Finally, it recommends that the cancellation fee be set at \$5, as originally proposed.</p> <p>The additional \$20 per call that the Legislature</p>

SP11-01 and SP11-04 – Telephone Appearances: Statewide Uniform Fees (amend Cal. Rules of Court, rules 3.670 and 5.324)

All comments are verbatim unless indicated by an asterisk (*).

	Commentator	Position	Comment	Response
			<p>fee to be \$20, effectively increasing existing prices by \$20. CourtCall has historically limited its price increases to \$5 every three years, so the State has now effectively taken the next twelve years of increases away from CourtCall. While CourtCall recognizes the unique relationship it has with the courts and the general legal community, it must also be recognized that the State has now taken over 33% of the old gross fee and 25% of the new fee, even if that fee is \$80 as suggested by CourtCall. CourtCall strongly urges that the fee be established at \$80 for the first two years.</p> <p>CourtCall also suggests that consistent with our current practice, the late fee should be in place for telephonic appearances set on less than 3 days notice, except when the court has requested a hearing on shortened time, the matter has a tentative ruling posted within that 3 day period or it is an ex parte hearing on shortened time where the 3 day rule would be impractical.</p>	<p>has determined should be allocated to the Trial Courts under SB 857 is very much needed at this time to address the present fiscal crisis. The amounts set by this rule amendment—and the corresponding master agreements required by statute—will have a duration of two years, until June 30, 2013. Before that time, the rules and master agreements will be reconsidered in light of the circumstances.</p> <p>Rule 3.670 (j)(2) has been modified in response to this comment., including specifying in the rule the exceptions to the requirement to provide three days’ notice to vendors. However, based partially on the comments of the State Bar’s Committee on Administration of Justice, an additional exception has been added: there would be no late fee if the request to appear by telephone is made by a party who received notice of another party’s intent to appear and thereafter decides also to appear by telephone under rule 3.670(g)(2).The request of such a party seeking to appear would be timely if its request is made to the vendor or court providing telephone appearance services by noon on the court day before the hearing or conference.</p>
2.	William M. Grewe, Esq. Rose, Klein & Marias LLP Ventura, California	NI	My concern is that, down the road, the cost of a telephonic appearance will be at a price point that will cause attorneys to make more appearances in	The fees will not grow each year. It is anticipated that the rule and related master agreement or agreements will remain effect for the next two

SP11-01 and SP11-04 – Telephone Appearances: Statewide Uniform Fees (amend Cal. Rules of Court, rules 3.670 and 5.324)

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	Commentator	Position	Comment	Response
			<p>person. That would be contrary to the original justification for telephonic appearances: Lawyers/cars would be off the highways and out of the parking lots; courthouses would be less crowded. As with filing fees, it is likely that the cost of a telephonic appearance will grow each year as those setting the price will be concerned with generating income not keeping the price at an attractive level.</p> <p>There should be only a \$1 charge for cancelling an appearance. It will begin at \$5 and creep to \$20 in no time. If a cancellation is to occur, it will be because something has changed compelling the attorney to appear personally. There should be only the most modest penalty for that.</p> <p>Consistently, a request to appear telephonically should only be considered "late" if it is made one court day before the hearing. There should not be a penalty. There is no additional work justifying a penalty. Moreover, every ex parte hearing would mandate a "late" fee for a telephonic appearance.</p>	<p>years, until June 30, 2013.</p> <p>This proposal recommends only a modest cancellation fee of \$5. Also, a hearing or appearance that is taken off calendar or continued by the court would not be a cancellation under the rule. If the hearing or appearance is taken off calendar by the court, there would be no charge for the telephone appearance. If the hearing or appearance is continued by the court, the appearance fee would be refunded to the requesting party or, if the party agrees, be applied to the new hearing date. (See rule 3.670(j)(3).) Furthermore, based in the input received so far, it appears more likely that, as part of some future legislation, the cancellation fee maybe eliminated entirely instead of being increased.</p> <p>This proposal provides a very clear and reasonable definition of when a request is "late." The report proposes the late fee should apply if a request to appear by telephone is not made at least three days before the scheduled appearance, with the following significant exceptions: (1) when the matter involves an ex parte or other hearing or conference set on shortened time</p>

SP11-01 and SP11-04 – Telephone Appearances: Statewide Uniform Fees (amend Cal. Rules of Court, rules 3.670 and 5.324)

All comments are verbatim unless indicated by an asterisk (*).

	Commentator	Position	Comment	Response
				where the three-day rule would be not be feasible or practical, (2) when the court, on its own motion, sets a hearing or conference on shortened time, (3) when the matter has a tentative ruling posted within the three-day period, or (4) when the request is made by a party who receives notice of another party's intent to appear and then decides to appear by telephone under rule 3.670(g)(2). (See rule 3.670(j)(2)(A–(D).) This approach to the late fee balances the needs of vendors and courts to receive information about telephone appearances sufficiently in advance to make preparations with the recognition that, as a practical matter, some requests cannot be made until shortly before a hearing or conference.
3.	Hon. Suzanne N. Kingsbury Judge of the Superior Court of El Dorado County	NI	I don't have an issue with the proposed rule, per se, but I have a criminal calendar and allow telephone appearances for attorneys who are distant from the court on short non-contested matters (such as requesting a continuance, setting future dates, etc.) or who cannot appear due to weather conditions. I also allow victims to appear by phone if they want to be heard but cannot make it to court, such as addressing the court at sentencing, on bail issues, and so on. Although I utilize Court Call as a provider when I am handling civil matters, I don't use them for criminal cases. Our court also tends not to use them for DCSS cases and other types of family law matters. I wouldn't want the setting of uniform fees by the rule to create some sort of presumption that courts need to always utilize a provider in order to allow a telephone	The proposed amendments to rule 3.670 are not intended to create a presumption that courts always need to use a vendor to provide for telephone appearances. First, rule 3.670 generally does not apply to criminal, juvenile, or family law matters. (See Cal. Rules of Court, rule 3.670(b)[rule applies to general civil cases and unlawful detainer and probate proceedings].) There is an exception for telephone appearances in child support and custody hearings and conferences under Title IV-D. For such cases several subdivisions of rule 3.670 apply to telephone services (see rule 5.324(j)), but the fees provided in rule 3.670(j) do not apply. (See rule 3.670(k)(2).) But otherwise, the rule does not apply to family law cases. Second, SB 857 authorizes both vendors and

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			appearance. The court needs to retain the discretion to directly make the call at its own expense.	<p>courts to charge telephone appearance fees. But Government Code section 72010(c)(3) and rule 3.670(i)(3) further provide that, even in proceedings where the statutory fees apply, fees may be waived by a judicial officer, in his or her discretion, for parties appearing directly by telephone in that judicial officer's courtroom.</p> <p>In sum, judicial officers will always retain the discretion to make telephone calls at the court's expense. Because the concerns raised by this commentator are of general interest to the public, the matters addressed in this comment and the response have been clarified by adding a new advisory committee comment to rule 3.670.</p>
4.	LB Vista, California	N	<p>The vendor cost is too high for many individual and/or families to pay. What is the profit to these vendors?</p> <p>The judicial system should not be setup as a business. The courts are not for the judges or lawyers. The courts are for the people to be heard.</p> <p>One does not have control over where a Plaintiff/Petitioner files and are unfamiliar with court rules and procedures. The majority of cases are prolonged due to Court and attorney error and misapplication of the law and/or pleadings.</p> <p>Many will view the cost as a decision to pay this appearance fee versus using this money to purchase food or use it toward housing. The waiver is meaningless as many times it is denied</p>	<p>The proposed fees are in an amount that has been determined appropriate to attract vendors to provide telephone service at no cost to the courts, which is essential at this time for fiscal reasons. To protect members of the public who cannot afford to pay the fees, both the underlying legislation (SB 857) and the amended rule specifically provide that persons eligible for fee waivers are not required to pay the telephone appearance fees, subject to certain conditions. (See Code Civ. Proc., § 367.6(b); rule 3.670(k).)</p> <p>Fee waivers play an important part in providing access to the courts. They are neither meaningless nor denied for frivolous reasons. The fact that fee waivers are available under SB</p>

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			<p>based on frivolous reasoning.</p> <p>Place the burden where it belongs on the judges and attorneys whose inabilities to handle cases effectively causes increased litigation. A flat \$20.00 can be affordable. More importantly it provides for the people access to Justice as many of these individuals will be appearing pro per or end up pro per after being robbed by his/her attorney for mediocre and many times incorrect or substandard pleadings leaving the individual with a legal malpractice case that no other attorney will take. Clean up the courts = someone, anyone is the cry of The People.</p>	<p>857 and rule 3.670 to enable low-income persons to appear in court by telephone through vendors is an important contribution to providing greater public access.</p> <p>The suggested \$20 fee would provide no revenue for vendors and hence no incentive for them to provide telephone appearance services. Vendor-provided services have played an important and effective role in providing access to the courts in a cost-efficient manner. Accordingly, this proposal recommends a fee structure that will continue to make telephone appearances services widely available and at the same time takes into account the situation of low-income litigants who are entitled to fee waivers and seek to appear by telephone.</p>
5.	Hon. Cindee F. Mayfield Judge of the Superior Court of Mendocino County	A	If revenue is to be shared with the courts, request that it be done pro rata, rather than limited to courts which previously received revenue from court call or other telephone appearance provider.	<p>The proposed method of allocation to the courts is based on statute, which precludes a pro rata distribution.</p> <p>Specifically, SB 857 provides that an amount equal to the amount received by all courts from all vendors for providing for telephone appearances for the 2009-2010 fiscal year shall be allocated by the Judicial Council “for the purpose of preventing significant disruptions in service in courts that previously received revenues from vendors for providing telephone appearance services.” It further provides: “The Judicial Council will determine the method and amount of the allocation to each eligible court.” (Gov. Code, § 72011(e).) Thus, the amounts of revenue received under SB 857 will need to be</p>

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				allocated among the eligible courts that previously received revenues, as provided under the statute.
6.	San Francisco Trial Lawyers Association, Court Liaison Committee San Francisco, California By Mark J. Zanobini, Esq.	A	On behalf of the Court Liaison Committee of the San Francisco Trial Lawyers Association, we believe that uniform fees for court calls are a very good idea.	The committee's support for uniform fees is noted.
7.	State Bar of California's Committee on Administration of Justice (CAJ) San Francisco, California	NI	<p>The State Bar of California's Committee on Administration of Justice (CAJ) appreciates the opportunity to submit the following comments on this proposal.</p> <p>First, the invitation to comment proposes that a fee of \$25 be established for late requests to appear by telephone. CAJ has been advised that, as of March 14, 2011, CourtCall no longer charges a fee for late requests unless the request is made after the time for the hearing has begun. CAJ recognizes that a statewide late request fee must be established, pursuant to SB 857. CAJ recommends that this fee be set at the nominal amount of \$5, the same as the proposed cancellation fee.</p> <p>Second, it appears that the proposal contemplates requiring notice to the vendor within the same</p>	<p>First, the information received by CAJ is not complete or accurate. CourtCall has been continuing to collect late fees in most courts. CourtCall's online fee schedule in May 2011 still shows that, while there is a range of late fees in California from \$0 to \$35 depending on the court, most courts (44) have late fees. There are reasons to charge more for a late request fee than for a cancellation fee, including the additional expense of processing a late request and the fact, where there is a cancelation, no appearance was ever made or services provided. It should be noted that the rule has been modified to clarify that the late fee will only apply in limited circumstances.</p> <p>Second, this report recommends that a request to appear by telephone should generally given to</p>

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			<p>timelines as notice to the court under subdivision (j)(1). However, the Invitation to Comment notes that “it may be that parties should be required to notify the vendors of their requests to appear sometime sooner than they provide notice to the court and other parties” and comments are invited on what alternative times for notification of vendors, if any, would be appropriate.</p> <p>Under the proposal, there are two timelines for notice to the court and other parties: (1) three court days before the hearing applies to a party who give notice of intent to appear without first receiving notice of intent to appear telephonically from any other party; and (2) noon the court day before the hearing applies to a party who receives notice of intent to appear telephonically and who then decides to also appear telephonically.</p> <p>Rather than requiring more notice to the vendor than that given to the court, CAJ believes the notice to the vendor should either be less or not trigger the late fee provision at all for the following reasons:</p> <ul style="list-style-type: none"> • The vendor likely has the same process for setting up a telephonic appearance regardless of whether it is done three court days before the hearing or by noon the court day before the hearing. Thus, there is no compelling reason to provide the vendor more notice than the required notice to the court or to require more than notice by noon the court day before the hearing. • There should not be an additional cost (late fee) 	<p>the vendor at approximately the same time as the court, but that the rule should recognize various circumstances under which shorter notice would be appropriate. To implement this, the rule would be revised along the lines suggested by this commentator and commentator 8 to require three days’ advance notice to the vendor, with explicit exceptions for the following situations where less time is needed: (1) when the matter involves an ex parte or other hearing set on shortened time where the three-day rule would be not be feasible or practical, (2) when the court, on its own motion, sets a hearing or conference on shortened time, or (3) when the matter has a tentative ruling posted within the three-day period.</p> <p>In addition, based on the original proposal that was circulated and the comments from the State Bar’s Committee on Administration of Justice (see the second point in the left column), an additional exception would be added: there would be no late fee if the request to appear by telephone is made by a party who received notice of another party’s intent to appear and afterwards decides also to appear by telephone. The request of such a party seeking to appear would be timely if its request is made to the vendor by noon on the court day before the hearing or conference.</p> <p>This approach to the late fee balances the needs of vendors and courts to receive information about telephone appearances sufficiently in advance to make preparations and the recognition</p>

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			<p>for the same service for one party and not another. A request/notice of intent to appear provided by noon the court day before the hearing, by a party who receives notice of intent to appear and thereafter decides to also telephonically appear, is timely under subdivision (j)(1) and therefore would not be subject to the late fee. Since notice to the court of intent to appear by telephone by noon the court day before the hearing is already allowed for some parties, it should be allowed for all. There should be no differentiation between a party who receives notice of intent to appear by telephone and also decides to appear by telephone and a party who simply decides shortly before a hearing that it wishes to appear by telephone. It is unlikely that the decision to appear by telephone is triggered by the other party's intent to appear by telephone. The decision is likely one based on cost savings.</p> <p>• CourtCall currently requires only a few hours notice to set up the telephonic appearance and, as noted above, does not charge a late request fee unless the request is made after the time for the hearing has begun. Thus, CAJ believes that notice to the vendor should not be included as a trigger for the late fee provision. CAJ believes that only untimely notice to the court should trigger the provision. In other words, once timely notice is provided to the court, no late fee should apply even if notice to the vendor is provided later. However, if notice to the vendor must also be a trigger for the late fee provision, the deadline for notice to the vendor should be</p>	<p>that, as a practical matter, some requests cannot be made until shortly before a hearing or conference.</p> <p>For calendaring, scheduling, and other practical reasons, notice to the vendor as well as to the court in a timely manner is needed. Making the deadline for all matters noon the day before the hearing would be too late. The rule basically makes a request timely if the request to the vendor is made at the same time as to the court. However, as explained above, the rule has been further revised to permit notice to the vendor less than three days before the appearance in a variety of specified circumstances in which a party would not be able to provide notice that early; in the enumerated circumstances, no late fee would be charged. (See rule 3.670(j)(2).)</p>

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			noon the court day before the hearing for all parties.	
8.	Superior Court of Los Angeles County Los Angeles, California	AM	<p>1. <u>Subpart (j)(2) late request fee</u> If the Court, on its own motion, has added a case on calendar with such little advance notice that a party cannot make a timely request for a telephonic appearance, there should be a waiver of the fee for late requests.</p> <p>2. <u>Subpart (l) Audibility and procedure</u> This section states “<i>The court must ensure that the statements of participants are audible to all other participants.</i>” We would recommend changing the word “<i>ensure</i>” to the word “<i>confirm.</i>” Audibility may ultimately be a vendor issue, beyond the ability of the court to address.</p>	<p>1. <u>Subpart (j)(2) late request fee</u> The late request fee provision in (j)(2) has been modified to provide for such a exception.</p> <p>2. <u>Subpart (l) Audibility and procedure</u> This suggestion is beyond the scope of the proposal that was circulated for public comment. It will be referred to the Civil and Small Claims Advisory Committee for future consideration.</p>
9.	Superior Court of Orange County Santa Ana, California By Alan Carlson Chief Executor Officer	NI	<p>Current practices and experiences in Orange County Superior Court are as follows:</p> <p>1. TELEPHONIC APPEARANCE FEE Our current contract fee is \$50 per call, all payable to the vendor; the Court does not receive any revenue. Note that the vendor supplies all equipment and the analog phone line into the courtroom, so there is no cost to the Court.</p> <p>2. FEE FOR LATE REQUESTS The Invitation to Comment proposes a \$25 fee be established for late requests to appear by phone. No such fee is in Orange’s current contract.</p> <p>3. CANCELLATION FEE The Invitation to Comment proposes a \$5</p>	This information about the court’s current practices and experiences is appreciated.

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			<p>cancellation fee. There is currently no similar fee in Orange. In Orange's contract, refunds are issued when a matter has been taken off calendar or dismissed by the Court, as long as the participant notifies the vendor in writing. If a matter is continued, the fee remains valid for the continued date of the matter.</p> <p>4. CONTRACTING GUIDELINES The Orange Court's current contract has an end date of June 30, 2011; however, under the terms of the Agreement, the Court does have a renewal option for additional years. Based on the new law, the contract can be terminated as of July 1st.</p> <p>5. IMPACT ON THE COURT AND COURT STAFF Based upon Orange's experience with a recent RFP for a telephonic appearance vendor, the burden on the court and its staff varies widely with the different business models of the two vendors. One does not require any equipment or phone lines to be provided by the Court. The impact on the staff is simply to push a button to answer the phone at the start of the hearing. The other vendor's model works through the Court's internet connection, and involves considerably greater activity and monitoring by the court staff on the part of the in court staff.</p>	
10.	Superior Court of Tulare County Visalia, California By Kerrie Scalia, Court Financial Officer	NI	Our Court has reviewed the proposed amendments to California Rules of Court (CRC), rule 3.670 and would like to submit the following comment.	

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			<p>The discussion under “Proposed Fees” indicates “there will no longer be any revenue sharing between the vendor and the courts under local contracts.” It further goes on to state “...to prevent service disruption in courts that previously received revenues, vendors shall transmit an amount equal to the total amount of revenue received from all courts from all vendors for providing telephone appearances in the 09-10 fiscal year, which amount shall be allocated by the Judicial Council to the courts.” Our Court has annual expenditures related to telephone appearances in the form of dedicated phone lines. The revenues our Court receives from the vendor are used to offset the cost of these dedicated phone lines.</p> <p>Is the Judicial Council going to provide our Court with sufficient funding to cover the costs we incur by providing telephone appearances? How will the Judicial Council allocate the “total amount of revenue received from all courts from all vendors for providing telephone appearances in the 09-10 fiscal year” to the Courts? Will this be an annual allocation to the courts or is it just for fiscal year 11-12?</p>	<p>The statements in the discussion in the invitation to comment referenced in this comment are based on the provisions in SB 857. (See Gov. Code, § 72011(c)–(e).)</p> <p>These questions about the allocation of the amounts to be received based on the 2009-2010 fiscal year revenues are addressed in the Judicial Council report. Under the proposed allocation, the Superior Court of Tulare county would continue to receive the same share of the total FY 2009-2010 revenue amount that it received in that fiscal year. This amount would be ongoing and would be distributed to the court in four quarterly allocations. (See chart, page 22.)</p>
11.	Hon. Rebecca Wightman, Commissioner of the Superior Court of San Francisco County San Francisco, California	AM	As a Child Support Commissioner, I would point out that the proposed amendments to rule 3.670 need to carve out an exception for telephone appearances in title IV-D child support hearings and conferences, which are permitted under California Rules of Court, rule 5.324.	The commentator persuasively explains the need for clarifying the scope of amended rule 3.670 and its relation to rule 5.324 on telephone appearances in child support proceedings under Title IV-D. To provide that clarification, a new subpart (I) and a new advisory committee comment have been added to rule 3.670. In

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			<p>The exception is needed because subdivisions (i) through (m) of rule 3.670 apply to title IV-D telephone appearances, per rule 5.324 (j). Title IV-D refers to Title IV-D of the Social Security Act (42 U.S.C. §601 <i>et seq.</i>) which requires each state to establish and enforce support orders when public assistance has been spent on behalf of a child or upon application of the parent. Since federal regulations prohibit charging fees in title IV-D cases where the state has elected to be a non-cost recovery state (as is the case with California’s IV-D program), the proposed statewide uniform fee cannot apply to telephone appearances made under rule 5.324 without putting federal funding for California’s child support program at risk.</p> <p>By way of background, federal law permits each state to elect one of two methods to recover the cost of administering the Title IV-D program. Each state is to elect to be either a “cost recovery state” or a “non-cost recovery state” (45 Code of Federal Regulations 302.33(c)). California under the State Plan of the Department of Child Support Services has expressly elected not be a “cost recovery state” to avoid the additional burdensome requirements inherent in such a system. If, contrary to the State Plan, a state is determined to have collected any fees related to Title IV-D cases, this will be offset against the state’s federal funding. The Department of Child Support Services [“DCSS”] has entered into an agreement with the Administrative Office of</p>	<p>addition, rule 5.324(j) would be amended because the cross- references in rule 5.324 to several subdivisions in existing rule 3.670 need to be revised to reflect the amendments to rule 3.670.</p>

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			<p>the Courts, pursuant to AB 1058, to provide funding to cover the cost of child support commissioners to hear all of the cases being provided services by the local child support agencies. As such, the courts are subject to the same prohibition on collecting fees as is the state Title IV-D agency [DCSS]).</p> <p>It might also help to be aware that California Government Code section 70672 states that no fee shall be charged to file a first paper or subsequent pleading on issues relating to support or parentage in a case in which a Title IV-D child support agency is providing services under Family Code section 17400. It is my understanding this provision was added to the Govt. Code to specifically deal with the prohibition on collecting fees in Title IV-D cases and eliminates the need to deal with fee waivers in any Title IV-D case as fees are prohibited regardless of any income means test.</p> <p>As noted, telephone appearances in Title IV-D proceedings are governed by a separate rule of court: California Rule of Court rule 5.324. Rule 5.324 was adopted to comply with Family Code section 5003's mandate that the Judicial Council adopt rules on or before July 1, 2005 to implement the provisions of subdivision (f) of Family Code section 4930 regarding hearings by telephone, audiovisual means or other electronic means. Section 5003 further mandated that hearings by telephone, audiovisual or other electronic means shall be permitted in cases in which the local child</p>	

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			<p>support agency is providing child support services but both parents reside in California, so long as the hearings are conducted so that they comply with the rules of court adopted pursuant to this section. Family Code section 4930 sets out special rules of evidence and procedure regarding establishment, enforcement or modification of a support order or issuance of a judgment determining parentage in cases where one of the parents resides outside of California. Subdivision (f) of Section 4930 provides that a tribunal of this state shall permit a party or witness residing in another state to testify or be deposed by telephone, audiovisual means or other electronic means at a designated tribunal or other location in that state.</p> <p>I would suggest that the following language be added to the proposed new subsection (k) of rule 3.670 to make it clear that the fee provisions of this rule do not apply to Title IV-D support proceedings. Also, as a long time trainer of new Child Support Commissioners statewide, I believe putting the proposed new language at this spot in the proposed new rules, would be the best place to provide clear information to all, including practitioners and pro-per litigants alike:</p> <p>(k) <u>Fee waivers and Title IV-D proceedings</u></p> <p>(1) A party that has received a fee waiver must not be charged any of the fees for telephone appearances provided under (j),</p>	<p>Instead of the language proposed by the commentator, this report recommends adopting alternative language that more clearly differentiates between the courts and vendors that provide telephone appearances service. As the commentator notes, because California is a non-cost recovery state, courts cannot collect fees for providing telephone appearances in IV-D proceedings. Vendors also cannot collect fees for the courts in such proceedings, but vendors can collect fees for their own provision of telephone appearance services. The vendors' provision of telephone appearance services to parties in IV-D cases would be subject to fee waivers. Thus, the proposed alternative approach to the issues raised by Commissioner Wightman would separate the fee waiver and Title IV-D provisions into the</p>

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			<p>subject to the provisions of Government Code section 367.6(b). To obtain telephone services from a vendor without payment of a telephone appearance fee, upon request by the vendor, a party must transmit a copy of the order granting the fee waiver to the vendor.</p> <p>(2) <u>Proceedings for child or family support that are brought by or otherwise involve the local child support agency under Title IV-D of the Social Security Act are exempt from the fee provisions under (j). When requesting telephone services from a vendor, the requester must advise the vendor that the proceeding is for child or family support and involves the local child support agency.</u></p>	<p>following two new subdivisions of rule 3.670:</p> <p><u>(k) Fee waivers</u></p> <p><u>(1) Effect of fee waiver</u></p> <p><u>A party that has received a fee waiver must not be charged the fees for telephone appearances provided under (j), subject to the provisions of Code of Civil Procedure Code section 367.6(b).</u></p> <p><u>(2) Responsibility of requesting party</u></p> <p><u>To obtain telephone services without payment of a telephone appearance fee from a vendor or a court that provides telephone appearance services, a party must advise the vendor or the court that he or she has received a fee waiver from the court. If a vendor requests, the party must transmit a copy of the order granting the fee waiver to the vendor.</u></p> <p><u>(3) Lien on judgment</u></p> <p><u>If a party based on a fee waiver receives telephone appearance services under this rule without payment of a fee, the vendor or court that provides the telephone appearance services has a lien on any judgment, including a judgment for costs, that the party may receive, in the amount of the fee that the party would have paid for the telephone appearance. There is no</u></p>

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				<p><u>charge for filing the lien.</u></p> <p><u>(l) Title IV-D proceedings</u></p> <p><u>(1) Court-provided telephone appearance services</u></p> <p><u>If a court provides telephone appearance services in a proceeding for child or family support under Title IV-D of the Social Security Act brought by or otherwise involving a local child support agency, the court must not charge a fee for those services.</u></p> <p><u>(2) Vendor-provided telephone appearance services</u></p> <p><u>If a vendor provides for telephone appearance services in a proceeding for child or family support under Title IV-D, the amount of the fee for a telephone appearance under (j)(1) is \$58 instead of \$78. No portion of the fee received by the vendor for a telephone appearance under this subdivision is to be transmitted to the State Treasury under Government Code section 72011.</u></p> <p><u>(3) Responsibility of requesting party</u></p> <p><u>When a party in a Title IV-D proceeding requests telephone appearance services from a court or a vendor, the party</u></p>

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				<p><u>requesting the services must advise the court or the vendor that the requester is a party in a proceeding for child or family support under Title IV-D brought by or otherwise involving a local child support agency.</u></p> <p><u>(4) Fee waivers applicable</u> <u>The fee waiver provisions in (k) apply to a request by a party in a Title IV-D proceeding for telephone appearance services from a vendor.</u></p>
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12.	Hon. David Abbott Judge of the Superior Court of Sacramento County	NI	<p>My first impression is, do these fees bear any reasonable relationship to the actual cost of providing this service?</p> <p>Second, is this fee structure feasible for each individual court to administer without losing money?</p> <p>I don't think the fees charged for phone appearances should be for the purpose of raising revenue. They should be to offset the actual cost of providing the service.</p>	<p>SB 857 specifies the amounts of the court fees to be collected from telephone appearance revenues (i.e., \$20 per call, plus an amount from all vendors equivalent to the FY 2009-2010 revenue sharing amounts), instead of authorizing fees be set at an amount necessary to offset the courts' actual costs. This statutory approach used by the Legislature to determine the amounts of the court fees permits the establishment of uniform, statewide fees; such uniformity would not be feasible under an approach based strictly on each court's actual cost recovery. SB 857's statutory fee provisions are implemented in the rule amendments and the master agreements for vendors.</p> <p>The fee structure in the statutes should provide sufficient revenues for all courts to administer the telephone appearance programs without losing money. From the vendors that provide telephone</p>

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				appearance services, the Trial Court Trust Fund will receive \$20 per call to be distributed to the trial courts. Eligible courts will also receive additional amounts based on FY 2009-2010 revenue sharing. Finally, under SB 857, individual courts can determine if it is beneficial for them to provide telephone appearance services directly instead of using a vendor. If a court determines that to do so is beneficial, it may provide the services.
13.	Hon. David I. Brown Judge of the Superior Court of Sacramento County	NI	Responding to the substance of the legislation, there ought to be a provision that notwithstanding the “good cause” to request a late telephonic appearance, the court retains the discretion to permit a telephonic appearance where it appears to the Court appropriate to allow one. That (as I read it) is not specifically addressed.	The commentator is correct that the present proposal does not address the provision in rule 3.670(g) that allows a court to permit a person, on a showing of good cause, to appear by telephone even if the person has not given the notice required by the rule. This comment, construed as a suggestion for further amendment to the rule, will be referred to the Civil and Small Claims Advisory Committee.
14.	Jennifer K. Berg, Attorney Oakland, California	A	Despite the increase in fees, telephonic appearances are a significant cost savings to attorneys and clients. Moreover, the environmental savings from reduced travel and the corresponding reduction in green house gas emissions benefits us all. I am a strong proponent of telephonic appearances and agree with the proposed changes.	The commentator’s support for the proposal is noted.
15.	Christine N. Donovan, CFLS Senior Staff Attorney Superior Court of Solano County	AM	The proposed Rule 3.670 includes an Advisory Committee Comment that this rule “generally does not apply to criminal, juvenile, or family	As the commentator correctly notes, the proposed advisory committee comment is intended specifically to clarify that rule 3.670 does <i>not</i> apply

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			<p>law matters.”</p> <p>This proposed rule does not take into account another circulating <i>Invitation to Comment</i>, which proposes the enactment of Rule 5.9 to permit telephone appearances in family law matters. (See <i>Invitation to Comment SPR11-36, Family Law: New, Restructured, and Amended Family Law Rules of Court</i>, p. 27-28.) Proposed Rule 5.9 reads as follows:</p> <p><i>Article 3. Appearance by Telephone</i></p> <p><i>Rule 5.9. Appearance by telephone</i></p> <p><i>(a) Application</i> <i>This rule applies to all family law cases, except for actions for child support involving a local child support agency. Rule 5.324 governs telephone appearances in governmental child support cases.</i></p> <p><i>(b) Telephone appearance</i> <i>The court may permit a party to appear by telephone at a hearing, conference, or proceeding if the court determines that a telephone appearance is appropriate.</i></p> <p><i>(c) Need for personal appearance</i> <i>(1) At its discretion, the court may require a</i></p>	<p>to family law proceedings, except to the extent prescribed in rule 5.324(j) for Title IV-D child support proceedings.</p> <p>The proposed amendments to rule 3.670 were developed earlier and circulated on two special cycles, before proposed rule 5.9 was first circulated. The amendments to rule 3.670 are not inconsistent with proposed rule 5.9— rather the rules are intended to be different in scope and application.</p> <p>Whereas rule 3.670 authorizes parties to appear at specified conferences, hearings and proceedings in specified types of civil cases unless a court on a hearing-by- hearing basis requires the party to appear in person, proposed rule 5.9 would authorize a court to permit parties to appear by telephone at hearings, conferences, or proceedings in family law cases if the court determines that a telephone appearance is appropriate. In this respect, the commentator’s suggestion to make rule 3.670 applicable generally to family law matters would itself create inconsistency with proposed rule 5.9.</p> <p>Furthermore, unlike rule 5.324 on telephone appearances in Title IV-D cases which states in subdivision (j) that certain provisions in 3.670 apply, proposed rule 5.9 on telephone appearances in family law cases contains no comparable provision. Even if rule 5.9 is subsequently adopted as proposed, it does not state that any of the provisions of rule 3.670 apply to other types of</p>

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			<p><i>party to appear in person at a hearing, conference, or proceeding if the court determines that a personal appearance would materially assist in the determination of the proceedings or in the effective management or resolution of the particular case.</i></p> <p><i>(2) If, at any time during a hearing, conference, or proceeding conducted by telephone, the court determines that a personal appearance is necessary, the court may continue the matter and require a personal appearance.</i></p> <p>Given the proposal to permit telephonic appearances in family law, it is inconsistent for proposed Rule 3.670 to continue excluding family law matters from its scope. Otherwise, if Rules 3.670 and 5.9 are read together, the logical interpretation is that telephonic appearances in family law are free of charge, because the rule setting forth the charges for telephonic appearances excludes family law. I agree that no fee should be charged for Title IV-D matters and in cases where there is a fee waiver. However, the fee structure proposed in Rule 3.670 should be expanded to include all other family law matters.</p> <p>Thus, I suggest the following revisions to proposed Rule 3.670:</p> <p>Rule 3.670 Telephone appearance</p> <p>(a) * * *</p>	<p>family law cases.</p> <p>Perhaps some of the provisions in rule 3.670 should eventually be made applicable to family law cases generally. But while this might be something to consider in the future, it is not part of the present proposal to amend rule 3.670 nor the proposal that is circulating to adopt new rule 5.9.</p> <p>In sum, what , if any, provisions in 3.670 should be extended to apply more generally to family law cases is beyond the scope of the current proposed amendments to rule 3.670. It would not be appropriate to expand rule 3.670 to all family law cases without careful and thorough consideration of all the issues involved, including the impacts on the master agreements for telephone appearance services that will go into effect on July 1, 2011.</p> <p>The proposed amendments to rule 3.670 on telephone appearances in Title IV-D cases have been revised to clarify that no fee would be charged by a court and no \$20 fee for the courts under Government Code section 72011 would be charged by a vendor in such cases. Fee waivers would apply to all the types of cases covered by rule 3.670. However, the suggestion to expand the general fee structure in rule 3.670 to all other family law matters is not appropriate at this time, for the reasons explained above.</p>

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			<p>(b) Application This rule applies to all general civil cases as defined in rule 1.6 and to unlawful detainer, and probate <u>and family law</u> proceedings.</p> <p><i>(c) – (o) * * *</i></p> <p>Advisory Committee Comment This rule generally does not apply to criminal <u>or</u> juvenile, or family law matters. (See Cal. Rules of Court, rule 3.670(b)[rule applies to general civil cases and unlawful detainer, and probate, <u>and family law</u> proceedings].) However, certain provisions of this rule apply to telephone appearances in proceedings for child or family support under Title IV-D of the Social Security Act. (See rule 5.324(j)[subdivisions (i) and (k) – (o) of rule 3.670 — on fee waivers and exemptions, vendors, procedure, audibility, reporting, and information — apply to telephone appearances in Title IV-D conferences and hearings].) As stated in subdivision (k)(2) of this rule, telephone appearances in Title IV-D proceedings are exempt from the fee provisions in subdivision (j) of this rule. Also, under Government Code section 72010(c) and subdivision (i)(3) of this rule, even for proceedings in which fees are authorized, the fees may be waived by a judicial officer, in his or her discretion, for parties appearing directly by telephone in that judicial officer’s courtroom.</p>	<p>For the reasons explained above, “and family law” should not be added to (b).</p> <p>For the reason explained above, the advisory committee comment should not be modified as proposed. Although for the sake of clarity the statement in the comment about the scope of the rule has been slightly modified in the final version presented to the council, its basic point (i.e., that the rule generally does not apply to criminal, juvenile, or family law matters) should be retained. Similarly, the statement about the limited exception for Title IV-D cases should be retained, though the version proposed in this report has been slightly shortened.</p>

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16.	Hon. Alan G. Perkins Judge of the Superior Court of Sacramento County	NI	I am also confused about the family law situation. The Rule 3 etc series seems to only apply to non-FL civil, and the new rule 5 etc would only apply to IVD proceedings. I am, of course, aware of the general sweep of the civil rules into FL if not otherwise controverted, but I think this situation will be needlessly confusing for pro pers. If the general civil rule is to apply to FL except for IVD, I think the FL rule should at least say that.	<p>This proposal to amend rule 3.670 to establish uniform, statewide telephone appearance fees for civil cases does not apply to most family law proceedings. It is not the intent of the proposal to expand rule 3.670 to cover all family law proceedings.</p> <p>As explained in the new advisory committee comment, rule 3.670 as amended does not apply to family law matters, except narrowly as to some aspects of Title IV-D child custody proceedings. Similarly, this proposal does not modify the existing family law rules on telephone appearances, except in a limited respect. In title 5, only rule 5.324, which concerns telephone appearances in Title IV-D child custody proceedings, would be amended to change subdivision (j), which states that subdivisions (i) through (m) of rule 3.670 apply to Title IV-D proceedings, to refer to amended subdivisions (i) through (p).</p>
17.	Superior Court of Contra Costa County By Mimi Lyster Director, Business Planning, Information & Programs	NI	<p>Contra Costa recommends that the language be amended to clarify and ensure that from the time that a vendor is engaged, they must handle all tasks (including refunds and credits) associated with collection and administration of the following fees:</p> <p>1) Appearance by phone fee for all but DCSS Title IV cases;</p> <p>2) Late Requests fee; and,</p>	Provisions regarding the responsibilities of the vendors have been included in the master agreement created pursuant to Government Code section 72010; hence, it is not necessary to include these provisions in rule 3.670.

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			<p>3) Cancellation fee.</p> <p>The proposed rule seems to allow either the vendor or the court to have responsibility for collecting and tracking receipt of the fees. We recommend that the Master Contract be strengthened to clarify that unless courts choose NOT to use a vendor for telephone appearances, this is exclusively the responsibility of the vendor.</p> <p>We also note that the Cancellation fee language states: "If the hearing or appearance is continued by the court, the appearance fee would be refunded to the requesting party, or if the party requesting the telephone appearance agrees, would be applied to the new hearing date."</p> <p>It does not state who would refund the fee, or describe a process for the requesting party to agree or disagree with applying it to a future hearing.</p> <p>Courts can easily provide the party with a copy of the minute order or other verification stating why the matter was continued and identifying a future hearing date, but any responsibility greater than this would cost us much more than the \$5 reimbursement.</p>	<p>The refund would be made by the entity—i.e., by the vendor or the court—that received the fee. The open-ended language allows the process for determining whether the fee will be applied to a continued hearing to be set by written agreement or other method.</p> <p>Comments from vendors and courts suggest that the cancellation fee may be unduly costly to administer and should probably be eliminated. SB 857 presently requires a cancellation fee; however, if experience supports the conclusion that this fee should be eliminated, legislation might be considered in the future to amend Code of Civil Procedure section 367.6 to eliminate it.</p>

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18.	Superior Court of San Diego County San Diego, California By Mike Roddy	AM	<p>1. Rule 3.670(b) states it “applies to <i>all general civil cases as defined in rule 1.6 and to unlawful detainer and probate proceedings.</i>” Rule 1.6(4) defines a “general civil case” as “all civil cases except probate, guardianship, conservatorship, juvenile, and family law proceedings (including proceedings under divisions 6-9 of the Family Code, Uniform Parentage Act, Domestic Violence Prevention Act, and Uniform Interstate Family Support Act; freedom from parental custody and control proceedings; and adoption proceedings), small claims proceedings, unlawful detainer proceedings, and “other civil petitions” described in (5).” Thus, family is specifically excluded from the rule’s mandatory requirements, but unlawful detainer and probate proceedings have been added back in by the express language of Rule 3.670(b).</p> <p>What happens if the court allows telephonic appearances to take place in family law proceedings? Do Rule 3.670 and the new fees apply, or is a court allowed to provide telephonic appearances in family proceedings without charging the fees? Although the new advisory comment provides some guidance in this regard, it does not specifically address whether a court is to charge for telephonic appearance services it elects to allow in additional case types that are otherwise excluded from the mandatory application of the rule.</p>	<p>1. The provisions of rule 3.670 do not currently apply, and would not apply under the proposed amendments, to family law proceedings. The purpose of the new advisory committee comment is to clarify this.</p> <p>The commentator is correct that rule 3.670 does not address whether or not a court may charge fees for case types not covered by the rule. As stated in the new advisory committee comment, the rule generally does not apply to family law cases. A court would be allowed to provide for telephone appearances in family proceedings without charging a fee. Whether a court may charge a fee in such cases is beyond the scope of this specific proposal.</p>

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			<p>2. Our court recommends that language be added to the rule stating: “No fee shall be charged if the telephonic appearance was granted as an ADA accommodation under CRC 1.100.” The rule specifically addresses fee waivers, but does not address requests for accommodation and that should be provided for in the language of the rule itself.</p>	<p>2. Courts, of course, must comply with the ADA. The proposed language, however, might create more confusion than clarity. Rule 3.670 only applies to telephone appearances by parties or their attorneys at specified types of civil hearings, conferences, and proceedings. On the other hand, the proposed language might be construed as applying to any court-ordered telephone appearances granted as an ADA accommodation, including possibly to appearances involving non-civil cases and to witnesses or members of the public as well as to parties and their attorneys. Furthermore, it is unclear whether the proposed language about there being “no fee” is directed solely to the courts or is also meant to apply to vendors of telephone appearance services. Because of the confusion that the proposed language might create, it appears better not to include it in rule 3.670 and to allow courts to continue to make ADA determinations in each case as appropriate.</p>
19.	Hon. B. Scott Thomsen Judge of the Superior Court of Nevada County	A	No specific comment.	No specific response required.